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IN

THE SUPREME COURT

OF THE

UNITED STATES

233

MARY MOHLAND,
Petitioner

VS.

MONTANA STATE BOARD OF EQUALIZATION, and JOHN ALLEY, J. MORLEY COOPER, HOWARD LORD, and MISSOULA COUNTY,
Respondents

Petition For Writ Of Certiorari To The SUPREME COURT OF THE STATE OF MONTANA

Mary Mohland
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59801

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MARY MOHLAND,
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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MONTANA

TO THE SUPREME COURT OF THE UNITED STATES OF AMERICA:

The Petitioner, Mary Mohland, presents this Petition for Writ of Certiorari to the Montana Supreme Court, and shows in support of the Petition as follows:

1. ORDER SOUGHT TO BE REVIEWED.

Petitioner seeks to have reviewed a decision of the Montana Supreme Court, dated March 12, 1970, in Case No. 11,800, entitled *Mary Mohland, Plaintiff, v. State Board of Equalization et al.* Appendix page 32. Pursuant to the laws of Montana, Petitioner applied to the Supreme Court of Montana for Writ of Certiorari so that said court could review a final decision rendered by Respondent, State Board of Equalization, dated September 26, 1969. Appendix page 30. V. X. 12, 13. Petitioner had appealed a decision rendered by the Missoula County Board of Equalization wherein Petitioner's request for alteration in land classification and a

reduction in assessed valuation of said land and the improvements attached thereto, located in Missoula County, Montana, was denied. None of the three decisions entered were reported, but are set forth in their entirety in Appendix pages 29 through 41.

2. JURISDICTIONAL GROUNDS. The grounds on which the jurisdiction of this court is sought are that the taxation authorities of Missoula County, Montana, have employed a totally different method of evaluating Petitioner's agricultural lands than is employed in determining the values of agricultural lands in the State of Montana. As a result of said method employed in regard to Petitioner's land; Petitioner has been forced to contribute a greater burden of property tax than is imposed upon other persons owning the same kinds of lands and which are devoted to the same actual purposes, and doing business under the same circumstances. The Missoula County taxation authorities have required Petitioner to contribute a property tax for an improvement (building) which ceased to exist in 1967. Petitioners sought recovery for the tax paid for the non-existent improvement but was denied recovery. By the two sets of acts described above, effectuated by instrumentalities of the government of the State of Montana, Petitioner has been denied the equal protection of the laws, and has been deprived of her property without due process of law, both being in conflict with the Fourteenth Amendment to the Constitution of the United States. The statuatory provision believed to confer jurisdiction to review the decision of the Mon-

[1] V.X. refers to Volume of Exhibits, followed by appropriate page number. The document entitled Volume of Exhibits includes the record materials for the proceedings conducted before the Missoula County Board of Equalization, and the State Board of Equalization.

tana State Supreme Court by Writ of Certiorari is 28 U. S. C. 1257 (3).

3. QUESTIONS PRESENTED FOR REVIEW.

The questions presented to this Court for review are:

A. Whether the imposition of a tax burden upon Petitioner's land, not placed upon other lands owned by other persons whose lands are devoted to the same purposes as Petitioner's land, and who are engaged in the same kind of business as Petitioner, and under the same circumstances, denied to Petitioner the guarantees of the Fourteenth Amendment to the Constitution of the United States.

B. Whether by requiring Petitioner to contribute an ad valorem tax for property which once existed but ceased to exist two years before the tax was imposed, the taxation authorities of Missoula County, Montana have denied Petitioner the due-process guarantee of the Fourteenth Amendment to the Coinstitution of the United States.

4. CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

A. Fourteenth Amendment to the Constitution of the United States, Section 1:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within

its jurisdiction the equal protection of the laws."

B. The following sections of the Revised Codes of Montana, 1947:

Section 84-301. (1999) Classification of property for taxation. For the purpose of taxation the taxable property in the state shall be classified as follows:

Class Four. All land, town and city lots, with improvements, and all trailers affixed to land owned, leased, or under contract of purchase by the trailer owner, manufacturing and mining machinery, fixtures and supplies, except as otherwise provided by the constitution of Montana, and except as such property may be included in Class Five or Class Seven.

Section 84-302. (2000) Basis for imposition of taxes. As a basis for the imposition of taxes upon the different classes of property specified in the preceding section, a percentage of the true and full value of the property of each class shall be taken as follows:

Class 1. One hundred per cent (100%) of its true and full value.

Class 2. Twenty per cent (20%) of its true and full value.

Class 3. Thirty-three and one-third per cent (33⅓%) of its true and full value.

Class 4. Thirty per cent (30%) of its true and full value.

Class 5. Seven per cent (7%) of its true and full value.

Class 6. Forty per cent (40%) of its true and full value.

Class 7. Seven per cent (7%) of its true and full value.

Class 8. Twenty per cent (20%) of its true and full value.

Class 9. Forty per cent (40%) of its true and full value.

Section 84-429.12. Classification and appraisal—general and uniform methods. It is hereby made the duty of the state board of equalization to implement the provisions of this act by providing:

1. For a general and uniform method of classifying lands in the state of Montana for the purpose of securing an equitable and uniform basis of assessment of said lands for taxation purposes.

All lands shall be classifed according to their use or uses and graded within each class according to soil and productive capacity. In such classification work, use shall be made of soil surveys and maps and all other pertinent available information. All lands must be classified by forty (40) acre tracts or fractional lots.

2. For a general and uniform method of appraising city and town lots.

3. For a general and uniform method of appraising rural and urban improvements.

4. For a general and uniform method of appraising timberlands.

5. STATEMENT OF CASE AND FACTS. This cause originated before the Missoula County Board of Equalization on July 22, 1969, whereby Petitioner, through her appointed agents, submitted an application to the Missoula County taxation authorities requesting a change in the classification of lands owned by Petitioner consisting of approximately 46.43 acres, and requested a reduction in the assessed values of said lands and a reduction in the assessed values of the improvements attached to said lands. The lands and im-

provements are located in Missoula County, Montana. Petitioner requested that her lands be classified and graded in the same manner as other agricultural lands and in conformity with the property tax laws of Montana. A complete copy of the application is included in V.X. 1-10.

On August 5, 1969, a hearing was conducted before the Missoula County Board of Equalization, hereinafter the County, for the purpose of processing said application presented by Petitioner. A complete transcript of the record of that proceeding is included in V.X. 22-44.

On August 8, 1969, the County rendered a decision denying all of the redress sought by Petitioner. They also failed to remove the tax burden for the non-existent building. The County resolved that the values ascribed to Petitioner's property were in line with adjacent properties. Appendix page 29.

On August 14, 1969, pursuant to the laws of Montana, Petitioner submitted an appeal of the County's decision to the State Board of Equalization. V.X. 1. (Original signed document was sent to said State Board.)

On September 11, 1969, a hearing was conducted before the State Board of Equalization, hereinafter the Board, for the purpose of hearing Petitioner's appeal. Petitioner was represented by Norma Mohland and Herman Mohland, daughter and son of Petitioner, who presented testimony and arguments in Petitioner's behalf. V.X. 45. A complete copy of the transcript of record of the proceeding is included in V.X. 45-99.

On September 26, 1969, the Board rendered a final decision denying the redress sought and upholding the burdens of taxes imposed upon Petitioner's property. (Decision in Appendix pages 30 and 31.

On December 20, 1969, Petitioner submitted an application for a Writ of Certiorari to the Montana Supreme Court seeking review of the Board's decision. (Certified copy sent). On March 12, 1970, the Court handed down a decision denying review, finding that Petitioner's constitutional rights had not been violated, and did not grant a Writ. Appendix pages 31-41.

Petitioner raised, at each proceeding recounted above, questions as to the legality of the tax burden imposed and the method of arriving at the value of Petitioner's land. Petitioner contended at each step of the progression of this cause that she was being denied the guarantees provided in the Fourteenth Amendment to the Constitution of the United States. See V.X. 4, 5, 58.

In her application for Writ of Certiorari to the Montana Supreme Court, Petitioner again raised the same question, at Page three of the application, and developed supporting argument at Pages 9 through 36 of the application.

HISTORY OF LAND

Petitioner has resided upon the land for thirty-five years. During the entire time, the land has been devoted to growing various crops. V.X. 4, 24.

Mr. Lucier, Chairman of the Missoula County Board of Equalization, stated at the hearing of August

5, 1969, that he has resided in the Missoula area all of his lifetime, and during that entire period, the land belonging to Petitioner has been devoted to growing crops. V.X. 24. The agricultural history of the land is not in dispute.

For the year of 1969, the County taxation authorities had assessed Petitioner's land (46.43 acres) in the amount of $18,570, or at the rate of $400.00 per acre, assessed value. V.X. 1.

Petitioner, in her application to the County, requested that her land be classified according to the actual use to which the land was devoted, and then graded in accordance with the productive capacity of the soil. Petitioner contended that the laws of Montana required the classification of lands, and a subsequent grading in accordance with the above request. V.X. 4, 5.

Because lands similar in character to Petitioner's land and capable of producing like yields in crops, located one mile distant from Petitioner's land, (V.X.27) were classified according to their actual devoted usage, Petitioner presented evidence in regard to the classification and grading of those lands to show that the burden imposed upon her land was far in excess of the burden imposed upon other like lands located in Missoula County which were devoted to the same or similar use as Petitioner's land.

The Missoula County taxation authorities have classified Petitioner's land as "Suburban Tracts", because, according to Missoula County Assessor Barclay:

"I would like to make one statement to clarify these things that have gone before. We looked at this Mary Mohland ranch actually as having come under the influence of the commercial and industrial attitudes and as such have been put into the only classification that we have on our sheet which is suburban tracts—which frankly is a little silly—it is a word we have—a terminology which is most confusing. We could probably say, if we wanted to be more particular, that it comes under the influence of commercial and industrial influence and therefore we in the Reclassification Office have converted it from farming and agricultural lands to the low commercial attitudes that we thought were forced on it. These figures that we have used on there are based on comparable values in the same general area on commercial lands and frankly they are low values. We consider them rather low at $1,000 an acre—or $46,000 for the entire tract.[2] I know this may not necessarily agree with what you have said, but I am stuck. This is the way our records will stand until your plea is answered." V. X. 32.

Petitioner received information from the records of Missoula County regarding lands owned by Mr. Elmer Flynn, consisting of two tracts totalling 182 acres. The property was presented as comparable property in compliance with a requirement on the application form prepared by Missoula County, and completed and submitted by Petitioner to the Missoula County Board of Equalization, July 22, 1969. V. X. 1.

[2] For clarity, the $1,000.00 per acre represents market value. The assessed value is equal to 40% of market value. That is why Petitioner's land has an assessed value of $400.00 per acre.

The Flynn property is classified and graded in the following manner.

Description

Section 12, T 13 N, R 20 W, P. M., 82 acres, broken down in the following manner:

Irrigated farm land

42 acres assessed at $41.60 per acre
Total assessed value $1747.00
11.5 acres assessed at $30.39 per acre
Total assessed value ..... $ 350.00

Non-irrigated land

13.5 acres at $9.44 per acre
Total assessed value ..... $ 127.00

Grazing land

8 acres at $3.72 per acre
Total assessed value ..... $ 30.00

Wild Hay

7 acres at $19.38 per acre
Total assessed value ..... $ 136.00

Description

Section 18, T 13 N, R 19 W, P. M., Missoula County, Montana—100 acres, broken down in following manner:

Irrigated farm land

91.01 acres assessed at $41.60 per acre
Total assessed value $3,786.00

9 acres assessed at $19.86 per acre
Total assessed value ..... $ 179.00

In her application to the County, Petitioner requested a reduction in assessed valuation of the land from $18,570 to $1,233.32 on the tract of 46.43 acres. She indicated that 28 acres of the land, those actually devoted to growing crops, should be assessed at $41.60 per acre, and that the balance of the land, 18.43 acres, should be classified as grassland and valued at $3.72 per acre. V. X. 3. The application form requested the above information be presented by the applicant seeking alteration in classification or reduction in assessed valuation. V.X. 1. Petitioner stated in her application to the County that her lands were similar in character to the Flynn land and that both her land and the Flynn land were capable of producing similar crop yields and that water for both owners was drawn from the same irrigation system. (Flynn Ditch) V.X. 4.

Montana law requires that all lands be classified according to their use and graded within the classes according to soil and productive capacity. Sec. 84-429.12, R.C.M., 1947, supra. That section in part is reprinted below:

> ". . . It is hereby made the duty of the state board of equalization to implement the provisions of this act by providing:
>
> 1. For a general and uniform method of classifying lands in the state of Montana for the purpose of securing an equitable and uniform basis of assessment of said lands for taxation purposes.

> All lands shall be classified according to their use or uses and graded within each class according to soil and productive capacity. . . ."

The State Board of Equalization, in compliance with the above cited statute, has provided for "a general and uniform method" of classifying agricultural lands in the State of Montana. A copy of that method referred to hereinafter as the *Agricultural Land Schedule*, was identified, offered, and accepted as Appellant's Exhibit No. 2; V.X. 61.

The Flynn land described supra was classified and graded in accordance with the Agricultural Land Schedule.

Petitioner prints that document in part herein to show that a direct relationship exists between class and grade of land on the Schedule, and each and every class and grade and subclass of land owned by Flynn. Moreover, the construction of the Agricultural Land Schedule reflects directly the principal intendments of the legislature of the State of Montana, as expressed in Section 84-429.12, R.C.M., 1947. (See also Appellant's Exhibit No. 2, V.X. 21)

CLASSES, GRADES, AND VALUE FOR MONTANA AGRICULTURAL LAND AS APPROVED BY THE STATE BOARD OF EQUALIZATION

NON-IRRIGATED FARM LAND

Grade	Bu. Wheat Per A. on Summer Fallow	Assessed Value Per Acre
1A3	30 and over	48.61
1A2	28-29	42.79
1A1	26-27	37.31
1A	24-25	32.22
1B	22-23	27.50
2A	20-21	23.15
2B	18-19	19.17
2C	16-17	15.56
3A	14-15	12.31
3B	12-13	*9.44**
4A	10-11	6.94
4B	8- 9	4.81
5	Under 8	3.06

GRAZING LAND

Grade	A. Per 1000lb Steer 10 Mos.	Assessed Value Per Acre
1A2	Under 3	71.69
1A1	3-5	44.18
1A	6-10	20.51
1B	11-18	10.53
2A	19-21	7.17
2B	22-27	5.42
3	28-37	*3.72**
4	38-55	2.52
5	56-99	1.47
6	100 or Over	.82

WILD HAY LAND

Grade	Tons of Hay Per Acre	Assessed Value Per Acre
1	3.0 and Over	67.60
2	2.5-2.9	53.03
3	2.0-2.4	41.38
4	1.5-1.9	29.43
5	1.0-1.4	*19.38**
6	.5- .9	10.05
7	Less than .5	5.54

TILLABLE IRRIGATED LANDS

Class 2 (Medium Rotation) Assessed Value Per Acre by Water Cost Classes

Grade	Tons Alfalfa Per Acre	Under $1.50	$1.50 2.49
1A	4.5+	97.26	90.60
1B	4.0-4.4	81.72	76.12
2	3.5-3.9	67.27	62.66
3	3.0-3.4	53.90	50.21
4	2.5-2.9	*11.60**	38.76
5	2.0-2.4	*30.39**	28.31
6	1.5-1.9	*19.86**	18.67
7	1.0-1.4	11.37	10.69
8	-1.0	4.55	4.28

At the hearing before the Missoula County Board of Equalization, Petitioner, through Herman Mohland, informed the Board that a shed measuring 16 feet by 24 feet, valued at $205.00 by the County, was no longer on the property, yet she has been required to pay a tax on it. V.X. 23. Before the State Board of Equalization, the fact was again brought to light, that the County had not made a reduction in total assessment. V.X. 5). In her application for Writ of Certiorari to the Montana Supreme Court, Petitioner again

raised the issue. (See Petitioner's application for Writ of Certiorari to Montana Supreme Court; certified copy sent with other certified record materials). None of these three tribunals who considered this cause made a judgment on that issue.

At the hearing before the State Board of Equalization, representatives from Missoula County offered into evidence a document which was produced and distributed by the State Board of Equalization. The document was received as County's Exhibit No. 1. It was identified at V.X. 64, offered and accepted into evidence at V.X. 65. Mr. Barclay, County Assessor of Missoula County, read portions of that document into the record. (V. X. 64, 65. See also V.X. 20.)

That document, which can be described as a set of guidelines for the appraisal of some agricultural lands as commercial, residential, or homesites, rather than classifying and grading them as agricultural lands, is reprinted below.

STATE of MONTANA
Board of Equalization
State Capitol Building
Helena, Montana
December 10, 1965

To: All County Commissioners
County Assessor
County Classifier and Appraiser

We have had many requests for guidance on when land used as farm or grazing land and classified as such should be appraised as industrial, commercial or residential property.

As you know, there are many factors affecting such a decision. The decisions in each situation can best be reached by a proper weighing of all facts.

The following guidelines represent our thinking at this time. If suggestions for changes or additions occur to you, we would appreciate your giving us whatever comments you would like to make.

1. The number of acres involved in a single tract is not the deciding factor in determining whether it is classified and graded as agricultural land or appraised as industrial, commercial, or residential land.

2. Actual use of land for purposes other than raising crops or grass automatically indicates an appraisal based on the actual use.

3. If land is to be appraised for industrial, commercial or homesite purposes, rather than classified and graded as farm or grazing land, the taxing authority must have definite proof through verified sales, options, or offers to purchase, etc. that there is a present demand for the land under consideration for a use that would justify a higher value than can be economically justified in agricultural use.

4. For purposes of valuation, in some circumstances, an existing tract may be broken down and the value of different parts of the tract be based on different uses or have different value for the same type of use.

5. The appraisal of industrial, commercial, and residential tracts should be: (a) based on current sales, and (b) should be in line with other comparable property.

If the above statements do not answer the questions you had in mind, do not hesitate to call or write to us.

Very truly yours,
STATE BOARD
of EQUALIZATION
s/ John C. Alley
John C. Alley, Chairman

JCA:ak

The State Board of Equalization, in their decision and order dated September 26, 1969, said in part: V.X. 12, 13; Appendix page 30.

> "... Evidence and testimony submitted to the Board on behalf of Missoula County based on verified sales of land surrounding appellant's indicated that there was a present demand for appellant's land for commercial or industrial purposes, and that the $1,000 per acre market value which the county had placed on appellant's land was in fact conservative. ..."

Upon the basis of the foregoing facts, Petitioner framed several questions and supported said issues with argument in her application for Writ of Certiorari to the Montana Supreme Court.

In her application to the Montana Supreme Court, Petitioner raised several questions, some relative to Montana statutes and the Constitution of Montana. Two questions were raised relative to the guarantees included in the Fourteenth Amendment to the Constitution of the United States. (See Petitioner's application 2, 3). In this petition, Petitioner has restricted the questions raised to the due process and equal protection provisions of the Fourteenth Amendment.

6. REASONS AND ARGUMENT FOR ISSUANCE OF THE WRIT. The reasons relied upon for issuance of a Writ are: that by the imposition of an ad valorem property tax upon Petitioner for once existing property, but which property ceased to exist over two years prior to the imposition of said tax, Petitioner has been deprived of her property (tax dollars) without due process of law. And by employing a different means of evaluating Petitioner's land, which means was

not employed to determine the value of other citizen's lands, whose lands are of like character as Petitioner's and whose lands are devoted to agriculture the same as Petitioner's land, and are engaged in the same business and under the same circumstances as Petitioner, the taxation authorities for Missoula County by the direction and with the approval of the State Board of Equalization for the State of Montana have denied to Petitioner the equal protection of the laws. Thus they have violated her constitutional guarantees as established in the Fourteenth Amendment to the Constitution of the United States.

By drawing a direct comparison between Petitioner's land and the Flynn land and similar land in Montana, the values of which are determined by the Agricultural Land Schedule, Petitioner is required to support a tax burden ranging from one thousand percent greater, to several thousand percent greater than the burden borne by other similar lands which are devoted to the same business use, and which are under same and like circumstances.

Section 84-301, R.C.M., 1947, requires that all taxable property in Montana be placed in one of nine separate classes of property. Land and improvements are classed in class number 4. Section 84-302 R.C.M., 1947, prescribes a percentage of the true and full value which shall be the taxable value. Both Sections of Montana law are printed in 4 supra.

Petitioner in her application to the Montana Supreme Court, pointed out at Pages 7 and 8 that she had been taxed on a non-existing thing measuring 46 feet by 24 feet and valued at $205.00. At Page 21 of the ap-

plication, she contended that she had been deprived of her property without due process of law. The Court did not make a judgment on that question. Petitioner contends that this Court has declared that taxes exacted in a manner which departs from the law either as to the authority for the tax or for its purpose, is the deprivation of a citizen of his property without due process of law. In *Raymond v. Chicago Traction Co.* 207, U. S. 20, this Court affirmed a Circuit Court decision in the case of: *Chicago Union Traction Co. v. State Board of Equalization*, 114 Fed. Reporter. The key rule of that decision is found on Pages 565-566, where that Court said:

> "Taxes are enforced contributions, levied by the State upon the property of individuals by virtue of its sovereignty, for the support of government, and for the public needs. The money thus taken, until taken, is, as much as real estate or chattels, property within the meaning of the Constitution of the United States; and the taking of property, as much so, for instance, as the taking of private land for some public work authorized by some law of the State or of Congress."

And:

> "Any substantial departure, therefore, in the collection of taxes, from the law, either as to the authority for a tax, or its purpose, or the provisions for the just distribution of its burdens, is a departure from due process of law; and the enforced collection of taxes, in the laying and distributing of which there is substantial departure from law, is the depriving of a citizen of his property without due process of law."

Petitioner reasons and submits that the due process guarantee has been violated here for two particular reasons. First, there is no basis in law for the imposition of the tax upon non-existing things. Second, Petitioner presented a legitimate grievance to the high court of the State of Montana and no consideration or judgment was entered upon the grievance. Further, when state courts are blind and deaf to the legitimate grievances presented to them for adjudication by citizens of that state, then by that lack of response by that court, the citizen has been denied the most fundamental universal right—*access.*

On the arguments regarding the land, the State Supreme Court attempted to come to grips with two contentions made by Petitioner.

> "Plaintiff's first contention is that the designation 'suburban tract' given to her land by defendant board does not reflect the 'actual' use to which the land is devoted and thus is not classified or assessed in accordance with the provisions of section 84-429.12, supra. With this we cannot agree. Nor can we agree with the proposition that 'market value' is an improper basis for assessments." See Appendix page 36.

Because Petitioner believes that the Montana Supreme Court misinterpreted the questions at issue presented by Petitioner in her application, discussion is here intended to clear up some quite confusing aspects of that Court's decision.

Petitioner did raise as an issue the matter of the designation ascribed to the land, that of "Suburban Tracts", which did not reflect the "use" of the land

as classification requires under Section 84-429.12 R.C.M., 1947; but that issue was relative only to Montana laws.

Petitioner also raised the question as to whether rural and suburban improvements could be assessed on the basis of their "market value". The reason for that argument was that the laws of Montana do not speak of "market value", but rather speak of "full cash value". There is a provision of Montana law which defines "full cash value"; it is not a synonym for market value. That argument was restricted solely to the question relative to rural and urban improvements and not with regard to the land.

At Pages 2 and 3 of her application, Petitioner framed several questions, four in all. The Montana Supreme Court attempted to consolidate the four questions into three and the result has been that the issues which were restricted to the laws of Montana have been mingled with the issues relative to the Constitution of the United States.

The Montana Supreme Court attempted to dispose of the value question by zeroing in on the propriety of "market value" as being a valid basis for evaluating property for tax purposes. Appendix pages 36-41.

Petitioner presented these intervening considerations to show that there are some confusing aspects to that Court's decision which cast the issues and questions raised by Petitioner in a light quite different from the actual way they were spelled out in her application. (See Petitioner's application to Supreme Court

of Montana, Pages 2-3. See Appendix for that Court's framing of issue, page 34.

The Supreme Court cited this Court's decision in *Cleveland Etc. Ry. Co. v. Backus*, 154 U.S. 439, 14 S. Ct. 1122, 38 L. Ed. 1041. Appendix page 37. That case has no bearing upon the questions at issue here, because the dispute there centered about the commerce clause in relation to a state's right to tax interstate commerce. There is no question involved here whether it is or is not constitutionally permissable to evaluate taxable property by one way in preference to one or several other ways. Obviously, that case cited above is not in point. Here the crux of the dispute centers about the fact that totally different means are employed to evaluate like properties which are devoted to the same use and as a result destructive tax burdens are placed upon some persons and not placed upon other persons who are engaged in the same business under the same circumstances.

Having established a judicially tested basis for the employment of "market value" as a basis for determining the value of property for tax purposes, the Court then proceeded to explain the reason for the use of "market value" by the taxation authorities. The Court, while having recognized that the land has been devoted to agricultural purposes, justified the higher value imposed and the different method used because of such factors as: sales of land in the vicinity of Petitioner's land; options to purchase; verified sales—indicating that there was a present demand for the land for a use that would justify a higher value than could be economically justified in agricultural use. Appendix pages 37-38.

The court then pointed out that Petitioner had in recent years sold some land for $9,000.00 per acre and also that Flynn had sold some land at the rate of $1,000.00 per acre. Appendix page 39.

The Court then pointed out that the record discloses that lands surrounding Petitioner's has sold in the range from $3,000.00 per acre to $23,000.00 per acre. "Thus, it is obvious that the Board had sufficient knowledge from which to determine the market value of the property in question here." Appendix page 40.

The Court then turned to Petitioner's contention that her constitutional rights have been violated. The Court draws from one of several quotations taken by Petitioner from decisions rendered by this Court. Following is a quotation from a United States Supreme Court decision, *Southern Railway Co. v. Greer*, 216 U.S. 400, 417, 54 L. Ed. 536, 30 S. Ct. 287.

> "While reasonable classification is permitted, without doing violence to the equal protection of the laws, such classification must be based upon some real and substantial distinction, bearing reasonable and just relation to the things in respect to which such classification is imposed; and classification cannot be arbitrarily made without any substantial basis." Appendix page 40.

The Court rejected the contention that Petitioner was deprived of her constitutional rights. The Court proceeds to buttress their resolution by making several points. Drawing from the above quotation, the Court first says:

> "Her property is being classified on a 'real and substantial distinction', i.e., 'market value.' This classification bears a 'reasonable and just relation' to the lands upon which it is imposed; and the classification is made with a substantial basis, i.e., other property within this general area is classified uniformly with hers."

Apparently the Court viewed the fact that Petitioner's land had a "market value", and felt that that was a sufficient distinction to separate it from other land. But the same inquiry made in regard to other lands will reveal that all lands have that quality—therefore "market value" is not a distinction at all, but rather a common attribute. To accentuate the point being made here, Petitioner refers to *Southern Railway v. Green* supra.

The teachings of the rules of that case tell us that to avoid doing violence to the equal protection of the laws, a taxable item or piece of property put into a class must warrant such separation and distinction by virtue of some real and distinct quality in their character or in their productiveness which makes it so distinct as to justify a different attitude or disposition toward it or them. "Market value" then, as an attribute, is not only a common quality of all lands, but a quality common to all things capable of being possessed.

The second point which the Court makes is that the classification bears a reasonable and just relationship to the land upon which it is imposed. This point possesses no logic at all. If the Court means "Suburban Tracts" as bearing a reasonable and just relationship to the land upon which it is imposed, then such classifi-

cation would equate "reasonable and just" with caprice. That designation is so ambiguous that it can be applied to any and all tracts of land located in the suburbs regardless of use or value.

The third point which the Court makes is that the classification is made with a substantial basis, i.e.; other property within this general area is classified uniformly with Petitioner's. At this juncture, the Montana Supreme Court has come head on with its own logic. At Page 7 of their decision (Appendix page 38), the Court noted that Petitioner argued that the Flynn land was assessed at a much lower rate than was hers. The Court said in answer: "'First, we must point out that a neighbor's property valuation is totally immaterial . . . . if his own assessment is not out of proportion as compared with valuations generally on the same roll, it is immaterial that some one neighbor is assessed too little, and another too much." If, as the Court said, the value of a neighbor's property is totally immaterial, then it can be reasoned that the existence of uniformity between the values of the surrounding property and Petitioner's land would be "totally immaterial" as justification for the imposition of the burden.

The source of the conflict and the gross injustice lies in the fact that Petitioner's property was evaluated in a manner different from other farmers'. There would be no grounds for dispute if all agricultural lands were evaluated by their "market value", as all then would be judged by the same set of criteria. But that is not the case in Montana.

The Agricultural Land Schedule was implemented

in compliance with Section 84-429.12 R.C.M., 1947. All agricultural lands have been reduced to five major classifications: non-irrigated farm land, grazing land, wild hay land, non-irrigated continuously cropped farm land, and tillable irrigated land. Grouped within those five major classes are subclasses and numerous grades. (See Agricultural Land Schedule supra)

It is patently evident that the classification is determined by the actual use, and the productivity determines the grade, and finally the value is affixed to the grade. In view of the fact that property taxes in Montana are ad valorem, the actual productivity of the land is the final determining factor which measures the actual amount of the tax at any given millage levy. There is a striking difference in the two methods employed. The Agricultural Land Schedule has a direct base in the laws of Montana. The means employed in determining the value of Petitioner's property, which have determined the weight of the tax burden, have no basis in law at all. For this reason, Petitioner submits that excessive taxation beyond what the law obligates her to, has deprived her of her property without due process of law. And because a gross disparity exists between the burden imposed upon Petitioner's land and upon other like lands in Montana, and the employment of grossly dissimilar methods of evaluating agricultural lands resulted in a destructive burden of taxes upon Petitioner's property, she has been denied the equal protection of the laws.

Petitioner, in her application to the Montana Supreme Court, cited several rules applied by the United States Supreme Court in previous decisions and one by a United States Circuit Court. Petitioner reasons and

submits that the teachings of those cases, when placed in juxtaposition with the facts and circumstances involved in this cause, will show that Petitioner's rights, guaranteed in the Fourteenth Amendment to the Constitution of the United States were in fact violated. Petitioner cites and quotes from those cases herein:

> "Arbitrary selection cannot be justified by calling it classification." *Gulf, Colorado & Santa Fe Ry. v. Ellis*, 165 U. S. 150, 159; *Cotting v. K. C. Stock Yards Co.*, 183 U. S. 79.
> "The guarantee of the equal protection of the laws means 'that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and in the same circumstances.'" *Connolly v. Union Sewer Pipe Co.* 184 U. S. 540; *Missouri v. Lewis*, 101 U. S. 22-31.

In Connolly v. Union Sewer Pipe Co. (supra), the Court said, regarding the Fourteenth Amendment, at Page 559.

> "The Fourteenth Amendment, in declaring that no State 'shall deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws', undoubtedly intended not only that there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; that they should have like access to the courts of the country for the protection of

their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of anyone except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition, and that in the administration of criminal justice no different or higher punishment should be imposed upon one than such as is prescribed to all for like offences. See *Missouri v. Lewis* 101 U. S. 22, 31.

7. Petitioner respectfully reasons and submits therefore, that for the reasons heretofore stated, the Respondents named in this cause and the Montana Supreme Court have each and together decided substantial issues involved herein in a manner not in accord with the decisions of this Court in the cases cited immediately above in 6, and that this Court may and should properly grant this Petition for Writ of Certiorari and direct an order to be entered to that effect.

Mary Mohland, Petitioner

APPENDIX

August 8, 1969

Miss Norma Mohland
P.O. Box 124
Missoula, Montana 59801

Mr. Herman Mohland
Route 1—Big Flat
Missoula, Montana 59801

Re Property of: Mrs. Mary Mohland
P. O. Box 124

Dear Sirs:

We have studied the evidence submitted to us on July 22, 1969, and find that we must deny your protest of assessment. We find it in line with adjacent properties.

If you desire, you may take this to the State Board of Equalization. We will send a transcript to them of your hearing. You must fill out the proper forms which you can obtain from this office for appeal to the State Board of Equalization, and they in turn will set up a date for a hearing.

If you desire, we will give you a copy of the transcript of the hearing held here.

Very truly yours,
Board of County Commissioners,
s/ Armand J. Lucier,
Armand J. Lucier,
Chairman.

HWS/lv
cc Clerk and Recorder
County Assessor
Reclassification Office
Mrs. Mary Mohland

September 26, 1969

Board of County Commissioners
Missoula County Court House
Missoula, Montana

RE: Appeal of Mary Mohland from a decision of the Missoula County Board of Equalization pursuant to the provisions of Section 84-709, R.C.M. 1947

Gentlemen:

The State Board of Equalization, having considered the evidence submitted at a hearing held in Helena, Montana September 11, 1969, and now being fully advised in the premises, makes its Findings of Fact, Conclusion of Law, and Order as follows:

FINDINGS OF FACT

1. The appellant, Mary Mohland, represented by Herman and Norma Mohland, contended that the appraisal placed on the improvements and land located in Missoula County, Montana was excessive and not in accordance with Montana law.

2. The appellant did not introduce evidence concerning sales of comparable properties in the vicinity, either on the improvements or on the land.

3. Evidence and testimony submitted to the Board on behalf of Missoula County based on verified sales of land surrounding appellant's indicated that there was a present demand for appellant's land for commercial or industrial purposes, and that the $1,000 per acre market value which the county had placed on appellant's land was in fact conservative. The county also introduced testimony and evidence indicating that the improvements on appellant's land were not appraised in excess of market value.

CONCLUSION OF LAW

Section 84-101, R.C.M. 1947, together with court interpretations of this statute and established administrative procedure, requires that property tax appraisals must be uniform with like property and not above market value.

ORDER

WHEREFORE, IT IS ORDERED that this appeal be, and it hereby is, denied.

DATED at Helena, Montana this 26th day of September, 1969.

By Order of The State Board of Equalization of the State of Montana

HOWARD H. LORD, Chairman

JOHN C. ALLEY, Member

J. MORLEY COOPER, Member

ATTEST:

VERNON B. MILLER, Secretary

cc: County Assessor
Mary Mohland

No. 11800

IN THE SUPREME COURT
OF THE STATE OF MONTANA
1970

MARY MOHLAND,
Plaintiff and Applicant,

vs.

STATE BOARD OF EQUALIZATION, and JOHN ALLEY, J. MORLEY COOPER, and HOWARD LORD and MISSOULA, COUNTY,
Defendants and Respondents.

ORIGINAL PROCEEDING:

Counsel of Record:

For Applicant:

Pro Se, Norma Mohland and Herman Mohland; Missoula, Montana.

For Respondents:

Leo J. Kottas, Jr., Helena, Montana.
Harold Pinsoneault, County Attorney, Missoula, Montana.

Submitted: February 6, 1970

Decided: March 12, 1970

Filed: March 12, 1970

THOMAS J. KEARNEY, *Clerk*

Mr. Chief Justice James T. Harrison delivered the Opinion of the Court.

This is an application for a writ of certiorari requesting this Court to review an order of the State Board of Equalization (hereafter referred to as the board). Applicants, Herman Mohland and Norma Mohland, son and daughter respectively of Mary Mohland, plaintiff herein, were appointed agents by Mary Mohland to prosecute this cause. Since plaintiff is not represented by counsel we issued an order on December 23, 1969 that this cause be submitted on briefs and no oral argument would be required.

This action arose in Missoula county. On July 22, 1969 plaintiff requested a reduction in the assessed valuation of a tract of land she owned consisting of 46.43 acres and the improvements thereon. On August 5, 1969 a hearing was conducted by the Missoula County Commissioners (hereafter referred to as commissioners), sitting as the county board of equalization. On August 8, the commissioners returned their decision denying the requested reduction. This decision was appealed to the board. Thereafter a hearing was held in Helena, Montana and on September 26, 1969 the board denied plaintiff's appeal. From this denial plaintiff seeks a writ of review from this Court.

The facts are not in dispute. The land is situated on the west side of the City of Missoula, near the old Mullan Road. The land is adjacent to old United States Highway No. 10 and is directly within the expanding commercial interests on Missoula's west side. In 1969 the lands were assessed at $18,570; the improvements on the land were assessed at $2,330. Plaintiff seeks to

have the lands assessed at $1,233.32 and the improvements assessed at $505.

Plaintiff submits several matters for this Court's determination which we have resolved into three basic issues.

1. Whether the board possesses jurisdiction and authority to direct and sanction the classification, appraisal and assessment of rural and urban improvements using "market value" as a basis and classifying them according to a use or uses other than those to which the land is actually devoted.

2. Whether the tax burden imposed on plaintiff's land is violative of Article XII, Section 11, of the Montana Constitution.

3. Whether the classification and taxing of plaintiff's land is violative of the equal protection and due process provisions of the fourteenth amendment to the United States Constitution. The issues will be discussed in the order they have been presented.

Article XII, Section 11, of the Montana Constitution provides as follows:

> "Taxes shall be levied and collected by general laws and for public purposes only. They shall be uniform upon the same class of subjects within thte territorial limits of the authority levying the tax:"

Article XII, Section 15, of the Montana Constitution provides in part as follows:

"... The state board of equalization shall adjust and equalize the valuation of taxable property among the several counties, and the different classes of taxable property in any county and in the several counties and between individual taxpayers; supervise and review the acts of county assessors and county boards of equalization; change, increase, or decrease valuations made by county assessors or equalized by county boards of equalization; and exercise such authority and do all things necessary to secure a fair, just and equitable valuation of all taxable property among counties, between the different classes of property, and between individual taxpayers. Said state board of equalization shall also have such other powers, and perform such other duties relating to taxation as may be prescribed by law."

Section 84-429.12, R.C.M. 1947 provides in part as follows:

"It is hereby made the duty of the state board of equalization to implement the provisions of this act by providing:

"1. For a general and uniform method of classifying lands in the state of Montana for the purpose of securing an equitable and uniform basis of assessment of said lands for taxation purposes.

"All lands shall be classified according to their use or uses and graded within each class according to soil and productive capacity. * * *"

Section 84-708, R.C.M. 1947, provides in part as follows:

"It shall be the duty of the board and it shall have power and authority in addition to any authority under the present statutes:

* * *

"(5) To adjust and equalize the valuation of taxable property among the several counties, and the different classes of taxable property in any county and in the several counties and between individual taxpayers; supervise and review the acts of county assessors and county Boards of equalization; change, increase or decrease valuations made by county assessors or equalized by county boards of equalization; and exercise such authority and do all things necessary to secure a fair, just and equitable valuation of all taxable property among counties between the different classes of property and between individual taxpayers.

"(6) To have and exercise general supervision over the administration of the assessment and tax laws of the state, and over assessors, county boards of equalization, boards of county commissioners, and other officers of municipal corporations, having any duties to perform under any of the laws of this state relating to taxation to the end that all assessments of property be made relatively just and equal at true value in substantial compliance with law, and to supervise the administration of all revenue laws of the state and assist in their enforcement, * * *."

Plaintiff's first contention is that the designation "suburban tract" given to her land by defendant board does not reflect the "actual" use to which the land is devoted and thus is not classified or assessed in accord-

ance with the provisions of section 84-429.12, supra. With this we cannot agree. Nor can we agree with the proposition that "market value" is an improper basis for assessments. The term "value" has been discussed by this Court in a previous tax question in *Brady Irrigation Co. v. Teton County*, 107 Mont. 330, 85 P 2d 350, and at page 333 we quoted the United States Supreme Court decision *Cleveland Etc. Ry. Co. v. Backus*, 154 U.S. 439, 14 S.Ct. 1122, 38 L.Ed. 1041, as follows:

> "'The rule of property taxation is that the value of the property is the basis of taxation. It does not mean a tax upon the earnings which the property makes, nor for the privilege of using the property, but rests solely upon the value. *But the value of property results from the use to which it is put and varies with the profitableness of that use, present and prospective, actual and anticipated.* There is no pecuniary value outside that which results from such use'." (Empasis supplied.)

The United States Supreme Court was deciding a question concerning taxing of a railroad in the above case, but the rule concerning values applies nevertheless. The Court went on in 154 U.S. at page 446 to say this: "It is enough for the state that it finds within its borders property which is of a certain value. *What has caused that value is immaterial.*" (Emphasis supplied.) Applying the above reasoning to the case at bar, it is evident that the "market value" is a proper basis upon which plaintiff's property has been assessed. The board has selected the market value since the plaintiff's property, although used for agricultural purposes, is really more valuable as commercial (suburban) property as witnessed by the evidence adduced before the board con-

cerning verified sales, options, and offers to purchase the land. There obviously is a present demand for the land under consideration for a use that justifies a higher value than can be economically justified in agricultural use. So long as this is a "general and uniform method of classifying lands" in the state there can be no argument that it is an improper method of classification. Plaintiff argued before the commissioners and argues here that certain property owned by Elmer Flynn, which is located some five miles from plaintiff's property is used basically for the same purpose. Plaintiff argues that Flynn's property is assessed at a much lower rate than hers. First we must point out that a neighbor's property valuation is totally immaterial. As we said in *State ex rel, Schoonover v. Stewart*, 89 Mont. 257, 275, 297 P. 476, "if his own assessment is not out of proportion, as compared with valuations generally on the same roll, it is immaterial that some one neighbor is assessed too little; and another too much." Also it must be recognized that the location of this property is quite important to its valuation. From the record of the Commissioner's hearing the following exchange took place at p. 28:

> F. Barclay: I refuse to recognize the Elmer Flynn property as comparable to the Mohland property. We would disagree on this.
>
> H. Mohland: Well, the reason I referred to it if you are talking of fair market values-if you like we can discuss the property in isolation. I believe the assessed value for highest grade of land is $41.60 per acre. What would be a fair market value from that assessed value? 2½ times - $104. Mr. Barclay, do you think that Mr. Flynn would sell you that land for $104 per acre?

F. Barclay: "No, I don't He just sold some for $1,000 an acre, *and you just sold some for $10,000 an acre*, so I'd suggest that we don't go into that too thoroughly."
(Emphasis supplied.)

Other like testimony was elicited from Mr. Mohland at the board's hearing. For example at p. 17 of the board's transcript the following exchange took place:

"Mr. Barclay: None of the land is offered for sale? Have you sold any land recently?

"Mr. Mohland: What do you mean by recently, sir?

"Mr. Barclay: In the last 2 or 3 years.

"Mr. Mohland: Yes.

"Mr. Barclay: Did you make a sale to Mr. Rangitsch?

"Mr. Mohland: Yes.

"Mr. Barclay: How much an acre was that sale for?

"Mr. Mohland: What part of the land are you speaking?

"Mr. Barclay: The 2 acres directly in back of the P.I.E. property.

"Mr. Mohland: How much per acre?

"Mr. Barclay: Yes sir.

"Mr. Mohland: As near as I can recall $9,000 an acre. $9,000 per acre sir."

Later, in the same transcript, it is indicated by Vern Stoterau, the Missoula county appraiser, that several pieces of property which surround the property of the plaintiff have been sold in the last two years. Of these sales the lowest price was about $3,000 per acre. The highest price that has been asked for one acre is $23,000. Other prices range between these two. Thus it is obvious that the board had sufficient knowledge from which to determine the market value of the property in question here.

Plaintiff's second and third issues question the constitutionality of the methods used by defendant in applying the tax statutes to her property. Plaintiff claims that the tax burden imposed upon her lands is violative of Article XII, Section 11, of the Montana Constitution. But she fails to set forth any reason for this claim.

Plaintiff then argues that her federal constitutional rights to due process and equal protection have been violated. This, she argues, came about when her property was classified at a greater value than that of Elmer Flynn's property. She sets for a quote from a United States Supreme Court decision, *Southern Railway Co. V. Green*, 216 U.S. 400, 417, 54 L.Ed. 536, 30 S.C. 287.

> "While reasonable classification is permitted without doing violence to the equal protection of the laws, such classification must be based upon some real and substantial distinction, bearing a reasonable and just relation to the things in respect to which such classification is imposed; and classification cannot be arbitrarily made without any substantial basis."

This Court has generally followed as controlling prec-

edent the rulings of the United States Supreme Court concerning constitutional rights. However, nothing has been shown to this Court here that plaintiff's constitutional rights have been violated. Her property is being classified on a "real and substantial distinction," i.e., "market value." This classification bears a "reasonable and just relation" to the lands upon which it is imposed; and the classification is made with a substantial basis, i.e., other property within this general area is classified uniformly with hers.

Therefore it is quite evident that the methods used by defendant board in classifying property for tax purposes are constitutional.

Finding no error in the board's holding of September 26, 1969, denying plaintiff's appeal, the petition for writ of review is hereby denied.

JAMES T. HARRISON
Chief Justice

We concur:

WESLEY CASTLES
FRANK I. HASWELL
JOHN CONWAY HARRISON
JOHN W. BONNER
Associate Justices

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NOV 9 1970
E. ROBERT SEAVER, CLE

No. 233

In the Supreme Court of the United States

OCTOBER TERM, 1970

MARY MOHLAND, *Petitioner,*

vs.

MONTANA STATE BOARD OF EQUALIZATION, and JOHN ALLEY, J. MORLEY COOPER, HOWARD LORD, and MISSOULA COUNTY, *Respondents.*

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MONTANA

ROBERT L. WOODAHL
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HAROLD J. PINSONEAULT
Missoula County Attorney
Missoula, Montana

October 30, 1970

THURBER'S HELENA

No. 233

In the Supreme Court of the United States

OCTOBER TERM, 1970

MARY MOHLAND, *Petitioner,*

vs.

MONTANA STATE BOARD OF EQUALIZATION, and JOHN ALLEY, J. MORLEY COOPER, HOWARD LORD, and MISSOULA COUNTY, *Respondents.*

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MONTANA

MEMORANDUM FOR RESPONDENTS IN OPPOSTION

The facts relevant to the disposition of this Petition are that Petitioner owns a 46.43-acre tract of land with nine improvements (buildings) thereon situated on the West side of the City Limits of the City of Missoula, Montana. The land is used in part to grow crops under a lease arrangement between Petitioner and another party, and the improvements on the land are used by Petitioner's family for living purposes and for storage of equipment. Petitioner's land is directly within commercial and industrial sites which have

grown from the City Limits of Missoula westward surrounding and passing beyond Petitioner's land. In 1969 Missoula County removed Petitioner's land from the classification applicable to agricultural land and placed it in the designation of suburban tracts, which resulted in the appraisal of the land as industrial or commercial property.

Petitioner presents two questions for review at page 3 of her Petition, neither of which has merit. Question A does not properly state the issue in contention. Petitioner's Question A raises the issue of whether Petitioner's land has a higher tax burden than the burden placed on another person whose land is exactly identical to that of Petitioner's. This issue as stated by Petitioner is novel, and was not raised or decided in the proceedings before the administrative tribunals or the Montana Supreme Court. For this reason alone the issue is not properly brought for review. *Tyrrell v. District of Columbia*, 243 U.S. 1; *California v. Taylor*, 353 U.S. 553, 557, N. 2; and *Lawn v. U.S.*, 355 U.S. 339, 362, N. 16. Petitioner's Question A is an attempt to frame an issue for her argument that there is a direct comparison between her land and the land of Elmer Flynn for tax purposes. (See Petition, pp. 17 and 18.) Petitioner's argument is that because her land and Flynn's land are both actually used for agricultural purposes, they should both be classified alike for tax purposes. The simple answer to this argument is that

the two properties are not comparable. Petitioner's land is in the heart of an industrial and commercial growth area, while Flynn's property is located some five miles from Petitioner's land and is not influenced by commercial or industrial growth. (Petition, pp. 38-40.) Thus, the actual distinction between Petitioner's land and the Flynn property is based upon the economic influences surrounding its location.

The only federal question raised by this Petition is whether the placing of Petitioner's land under the suburban tract designation for property tax purposes violates the equal protection provision of the Fourteenth Amendment to the United States Constitution. The decision of the Montana Supreme Court on this issue is in complete accord with the applicable decisions of this Court. At page 40 of the Petition the Montana Supreme Court's decision in this case quotes from this Court's decision in *Southern Railway Co. v. Green*, 216 U.S. 400, 417, 54 L. Ed. 536, 30 S.C. 287, as follows:

> "While reasonable classification is permitted without doing violence to the equal protection of the laws, such classification must be based upon some real and substantial distinction, bearing a reasonable and just relation to the things in respect to which such classification is imposed; and classification cannot be arbitrarily made without any substantial basis."

Petitioner's land is classified on a "real and substantial distinction" on the basis of its commercial or in-

dustrial value as distinguished from the agricultural value of lands not influenced by the commercial expansion in the area. Montana statute Section 84-429.12, R.C.M. 1947, set out on page 5 of the Petition, provides for such distinction in classification of lands, and it is applied generally and uniformly throughout the state. A designation of Petitioner's land under suburban tracts requires that the land be appraised at its market value rather than classified and graded as if it were designated agricultural lands. Thus, on page 24 of the Petition where Petitioner asserts that market value is not a sufficient distinction, it is obvious that Petitioner misunderstands the term "market value." For the purposes of property taxation, land which is designated as city or town lots or commercial, industrial or residential tracts is appraised at market value. Market value is held by the Montana Supreme Court to be a proper basis upon which to assess property. *State ex rel. Board of Equal. v. Vanderwood*, 146 Mont. 276, 282-285, 405 P. 2d 652. This Court in *Cleveland Etc. Ry Co. v. Backus*, 154 U.S. 439, 14 S.Ct. 1122, 38 L.Ed. 1041, stated that "the rule of property taxation is that the value of the property is the basis of taxation," and further at 154 U.S., page 446, that "It is enough for the state that it finds within its borders property which is of a certain value. What has caused that value is immaterial." The designation of Petitioner's land

under suburban tracts bears a reasonable and just relation to the things in respect to which such classification is imposed because the land has high commercial or industrial value as indicated at pages 39 and 40 of the Petition. It is obvious that the designation of Petitioner's land under suburban tracts was made on a substantial basis in view of the use and high value of the land surrounding the property of Petitioner, as shown on pages 39 and 40 of the Petition. Thus the classification of Petitioner's land is reasonable, and no violation of the Fourteenth Amendment is established.

Petitioner's Question B (Petition, pg. 3) is not properly brought to this Court for review, and even if it were it does not present an important constitutional issue. Petitioner claims she was denied due process because she was taxed for a nonexistent building valued at $205.00. At page 19 of her Petition Petitioner admits that the Montana Supreme Court "did not make a judgment" on the question. It is therefore not properly reviewable. *Tyrrell v. District of Columbia*, supra, *California v. Taylor*, supra, and *Lawn v. U.S.*, supra. In her Application for Writ of Certiorari to the Montana Supreme Court the issues presented at pages 2-3 do not suggest the question presented to this Court. The only mention of this issue in her Petition to the Montana Court is under the fact section on pages 7-8 where in three sentences she discusses the building. Nowhere in the Petition does she argue the

issue. Although the Montana Court did not address itself specifically to Question B, they may have felt that the issue was insubstantial because of the evidence in the record. At page 7 of Petitioner's Application for Writ of Certiorari to the Montana Supreme Court she states that there are nine buildings on her property. At Petitioner's hearing before the Missoula County Board of Equalization Mr. Stotereau stated that the County is assessing and taxing only eight buildings, which is one less than Petitioner claims is on the land. (Vol. of Exhibits, pg. 23.) Respondents respectfully suggest that this fact question does not present an important constitutional issue which could affect anyone other than Petitioner, and therefore would not clarify or add to constitutional law relating to due process.

In conclusion Respondents suggest that the questions sought to be reviewed do not have merit, and for the reasons detailed above the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

ROBERT L. WOODAHL
Attorney for Respondents

Of Counsel:
EDWARD JENE BELL
HAROLD J. PINSONEAULT
October 30, 1970